

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB JULY 3/00

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Hamilton Company

Serial No. 75/172,376

Bernhard Kreten for Hamilton Company.

Glenn G. Clark, Trademark Examining Attorney, Law Office
115 (Tomas V. Vlcek, Managing Attorney).

Before Cissel, Hairston and Bottorff, Administrative
Trademark Judges.

Opinion by Bottorff, Administrative Trademark Judge:

The Board's Applicant seeks registration on the
Principal Register of the mark SOFTGRIP for goods
identified in the application as "precision dosage
apparatus and instruments, namely, pipettes."¹ The
Trademark Examining Attorney has refused registration under

¹ We take judicial notice that "pipette" is defined as "a small
piece of apparatus which typically consists of a narrow tube into
which fluid is drawn by suction (as for dispensing or
measurement) and retained by closing the upper end." Webster's
Ninth New Collegiate Dictionary (1990) at 895.

Trademark Act Section 2(e)(1), 15 U.S.C. Section 1052(e)(1), on the ground that applicant's mark is merely descriptive of the identified goods.

When the refusal to register was made final, applicant filed this appeal. Applicant filed an appeal brief and, with the Board's permission, a supplemental appeal brief following the Trademark Examining Attorney's rejection of applicant's request for reconsideration. The Trademark Examining Attorney also filed a brief, but applicant did not file a reply brief. No oral hearing was requested.

We affirm the refusal to register.

Section 2(e)(1) of the Trademark Act prohibits, inter alia, the registration of a mark which, when used on or in connection with the goods or services of the applicant, is merely descriptive of them. A term is merely descriptive of goods or services if it immediately describes an ingredient, quality, characteristic, or feature thereof or if it directly conveys information regarding the nature, function, purpose, or use of the goods or services. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978).

We find that applicant's mark, SOFTGRIP, is merely descriptive of applicant's goods, pipettes, inasmuch as it

directly and immediately informs purchasers that the pipettes feature an ergonomically designed "soft grip" handle. The Trademark Examining Attorney has presented evidence, including numerous excerpts of articles obtained from the NEXIS® automated database and printouts of various third-party web pages,² which is sufficient to establish that purchasers are accustomed to seeing the term "soft grip" or "soft-grip" used to describe the ergonomically-designed handles of a wide variety of hand-held tools, instruments and implements, including kitchen tools and gadgets, cookware, hand tools such as screwdrivers and

² Applicant argues that the Trademark Examining Attorney's NEXIS® evidence should not be considered because the articles are presented only in excerpted form, and thus are incomplete and "may likely be taken out of context." We are not persuaded. The excerpts were printed by the Trademark Examining Attorney in the standard NEXIS® format "KWIC." The context of the use of "soft grip" in these excerpts is clear to us from the face of the evidence, and we find these excerpts to be admissible and probative evidence on the mere descriptiveness issue to be decided in this case. Applicant has not shown, i.e., by submission of the full versions of the articles in question, that any of the specific references to "soft grip" relied upon by the Trademark Examining Attorney are, in fact, taken out of context. For the same reasons, we likewise reject applicant's similar objection to the Trademark Examining Attorney's Internet evidence. Additionally, although applicant is correct in noting that several of the NEXIS® excerpts and Internet web pages submitted by the Trademark Examining Attorney are either duplicative or else not germane to the issue of mere descriptiveness, that fact does not detract from the probative significance of the remainder of the excerpts and web pages submitted by the Trademark Examining Attorney, which are both relevant and non-duplicative.

hammers, power tools, pens, garden tools, toothbrushes, laundry baskets, scissors, lanterns, and razors.

For example, the NEXIS® excerpts include references to garden tools having "soft grips to make them comfortable to grasp"; "soft-grip or ergonomic hand tools for people with arthritis, muscle, hand, grip problems"; a detailing tool with a "slim ergonomic design and soft grip surface"; "big handled, soft-grip kitchen tools"; "soft grips on toothbrushes"; "soft-grip scissors"; and a hand mixer, electric knife and can opener which have "rounded, curvy shapes and the inevitable soft-grip handles." Likewise, the Internet evidence submitted by the Trademark Examining Attorney includes, inter alia, a web page advertising Oral-B® toothbrushes having a "soft-grip handle"; a web page advertising a Samsonite® Compact Luggage Cart having a "durable steel frame with soft grip handle"; and a web page from Ace® hardware advertising an air-powered brad nailer with "a soft grip handle."

The record also establishes that applicant's pipettes, like the various tools and implements mentioned in the NEXIS® and Internet evidence, utilize and feature a "soft grip" handle. See, e.g., applicant's catalog at page 69: "Soft, non-slip handle assures a relaxed grip minimizing

fatigue." Likewise at page 68, applicant's catalog touts this feature of its goods: "Less user fatigue due to the soft ergonomic shape and low plunger forces; less discomfort in the hand and wrist as compared to other pipettes during prolonged use"; "The soft, non-slip handle minimizes fatigue associated with repetitive, pipetting motions and its ergonomic shape is sized perfectly to fit your hand."

It is apparent from these excerpts from applicant's own marketing materials that applicant's pipettes feature a handle that has a soft grip. We take judicial notice that "soft" is defined, inter alia, as "pleasing or agreeable to the senses: bringing ease, comfort or quiet," and "lacking relatively or comparatively in hardness," and that "grip" is defined, inter alia, as "a part by which something is grasped; esp: handle." Webster's Ninth New Collegiate Dictionary (1990) at 1120 and 537. Moreover, in view of the widespread use of "soft grip" to describe the ergonomically designed handles of a variety of different products, purchasers will immediately and directly understand, when they see that term or its legal equivalent SOFTGRIP used on or in connection with pipettes, that the pipettes feature ergonomically designed, "soft grip" handles.

We have carefully considered all of applicant's arguments in opposition to the Trademark Examining Attorney's mere descriptiveness refusal, but we are not persuaded by any of them. Specifically, we find that the mere descriptiveness of the words "soft" and "grip," as applied to applicant's goods, is not eliminated by combining them into the composite term SOFTGRIP. That composite is as merely descriptive of the goods as are the two words considered separately. SOFTGRIP creates the same commercial impression as "soft grip"; no unique, unusual or incongruous meaning results from the combination of the two words. *See In re Pharmaceutical Innovations, Inc.*, 217 USPQ 365 (TTAB 1983).

Applicant argues that the evidence of record establishes, at most, that "soft grip" is merely descriptive of "handles," and that applicant's goods are pipettes, not handles. Applicant also argues that SOFTGRIP does not describe any of the other features or functions of applicant's pipettes. However, a mark is merely descriptive if it describes a single significant feature of the goods. *See In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985). The handle of applicant's pipette certainly is a significant feature of the pipette, and because SOFTGRIP merely describes that feature, it is

merely descriptive of the goods under Section 2(e)(1). Moreover, it is not determinative that purchasers might not be able to immediately discern from applicant's mark all of the specific features of applicant's goods, so long as the mark merely describes one significant feature of the goods. See *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537 (TTAB 1998); *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982).

Likewise, it is not dispositive that purchasers, upon hearing or seeing SOFTGRIP, might not immediately know that the goods are pipettes. The mere descriptiveness of a mark is not determined in the abstract, but in relation to the identified goods. That is, the issue is not whether purchasers would be able to determine or guess, from the mark alone, what the goods are. Rather, the issue is whether the mark, when considered in connection with the goods, immediately describes a significant feature, function, characteristic, etc. of the goods. See *In re Abcor Development Corporation*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978); *In re Venture Lending Associates, supra*.

Finally, the purported availability of other terms which applicant's competitors might use in connection with their pipettes does not negate the mere descriptiveness of the term applicant seeks to register. See *In re The Officers' Organization For Economic Benefits, Limited*, 221

USPQ 184 (TTAB 1984). Likewise, it is not dispositive that applicant might be the first or only user of the term SOFTGRIP in connection with pipettes, per se. See *In re National Shooting Sports Foundation, Inc.*, 219 USPQ 1018 (TTAB 1983).

In summary, we find that the Trademark Examining Attorney has presented evidence sufficient to establish the mere descriptiveness of SOFTGRIP as applied to the goods identified in applicant's application. In view thereof, and because we are not persuaded by any of applicant's arguments in opposition to the Trademark Examining Attorney's mere descriptiveness refusal, we affirm the refusal.

Decision: the refusal to register is affirmed.

R. F. Cissel

P. T. Hairston

C. M. Bottorff

Administrative Trademark Judges
Trademark Trial and Appeal Board